

ARKANSAS SUPREME COURT

No. CR 06-1310

NOT DESIGNATED FOR PUBLICATION

Opinion Delivered

February 1, 2007

TERRY LYNN KUELPER
Appellant

PRO SE MOTION TO FILE BELATED
BRIEF [CIRCUIT COURT OF BENTON
COUNTY, CR 2002-626, HON.
TOMMY J. KEITH, JUDGE]

v.

STATE OF ARKANSAS
Appellee

APPEAL DISMISSED; MOTION
MOOT.

PER CURIAM

In 2003, Terry Lynn Kuelper was found guilty by a jury of two counts of rape and sentenced to an aggregate term of thirty years' imprisonment in the Arkansas Department of Correction. The Arkansas Court of Appeals affirmed. *Kuelper v. State*, CACR 03-1379 (Ark. App. Oct. 12, 2005). Subsequently, appellant timely filed in the trial court a petition for postconviction relief pursuant to Ark. R. Crim. P. 37.1. The trial court denied the petition and appellant lodged a *pro se* appeal here of that order.

Now before us is appellant's *pro se* motion to file a belated brief. We need not consider the motion as it is apparent that appellant could not prevail if the appeal were permitted to go forward. Accordingly, we dismiss the appeal and hold the motion moot. This court has consistently held that an appeal from an order that denied a petition for postconviction relief will not be permitted to proceed where it is clear that the appellant could not prevail. *See Pardue v. State*, 338 Ark. 606, 999 S.W.2d 198 (1999) (*per curiam*); *Seaton v. State*, 324 Ark. 236, 920 S.W.2d 13 (1996) (*per curiam*).

Arkansas Criminal Procedure Rule 37.1(d) requires that the petition be verified and that an unverified petition may not be filed without leave of the court. *Morris v. State*, 365 Ark. 217, ___ S.W.3d ___ (2006) (*per curiam*); *Shaw v. State*, 363 Ark. 156, ___ S.W.3d ___ (2005) (*per curiam*). The verification requirement for a petition seeking postconviction relief is of substantive importance to prevent perjury. *Boyle v. State*, 362 Ark. 248, ___ S.W.3d ___ (2005) (*per curiam*); *Knappenberger v. State*, 278 Ark. 382, 647 S.W.2d 417 (1983). In order to serve this purpose, a petitioner must execute the verification, and if the petitioner is represented by counsel, counsel may not sign and verify the petition for him. *Boyle, supra*.

Here, the petition did not contain appellant's signature as required by Rule 37.1 and was filed on the sixtieth day after the mandate of this court was issued. Any subsequent verified petition would have been filed after the sixtieth day. Pursuant to Ark. R. Crim. P. 37.2(c), if an appeal was taken, a petition verified by the petitioner under the rule must be filed in the circuit court within sixty days of the date the mandate was issued by the appellate court. A circuit court cannot address the merits of an improperly verified petition, as the time limitations imposed in Criminal Procedure Rule 37.2(c) are jurisdictional in nature, a trial court may not grant relief on an untimely petition. *Maxwell v. State*, 298 Ark. 329, 767 S.W.2d 303 (1989).

Appeal dismissed; motion moot.